IN THE

Supreme Court of the United States

October Term, 1971.
No. 71-473.

MARTIN S. WEGD D.D.S.,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

Petition for Rehearing on Order Denying Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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To the Supreme Court of the United States and the Honorable Justice thereof:

Comes now Petitioner MARTIN S. WEG, D.D.S., by and through his undersigned counsel, who presents this, his Petition for Rehearing on Order Denying Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, and in support thereof respectfully states to the Court:

I.

On May 30, 1972, the Court denied Petitioner a Writ of Certiorari to the Court of Appeals, Mr. Justice Douglas dissenting. It appears that Certiorari was denied because of the intervening decision in *Kastigar & Stewart v. United States,* .... U.S. ...., (decided May 22, 1972, No. 70-117 [O.T. 1971]), in which cause a Petition for Rehearing has been timely filed.

II.

Counsel for Petitioner herein respectfully submits that the decision in *Kastigar & Stewart, supra,* was erroneous, for the reasons set forth in the Petition for Rehearing in the latter cause, and further, that the cause herein became mooted since the investigation of the here-relevant subject matter of the then-constituted Grand Jury of the Central District of California has been terminated[1] by the trial and conviction of the subject of that Grand Jury investigation, Dr. Bernard Bender.

Thus, further investigation by Grand Jury would serve only to expose Petitioner Weg's activity to scrutiny and would serve no lawful purpose. As such, Petitioner submits that the *Use Immunity* provisions of 18 U.S.C. §§ 6002-03 may no longer be used against *him* to compel him to testify; all such testimony could *now only* be used to aid in *Petitioner's* prosecution.

III.

Conclusion.

For the reasons above-submitted, and for the reasons further appearing in the Petition for Rehearing in *Kastigar & Stewart* (No. 70-117), Petitioner respectfully suggests that this Court reconsider its Order Denying Certiorari, withdraw said Order, and grant Certiorari herein to the Court of Appeals.

Respectfully submitted,

FRANK S. PESTANA,
Attorney for Petitioner.

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[1] *See, e.g., In re Russo,* 448 F.2d 369, 374 (9th Cir. 1971).

Verification of Attorney.

I, Frank S. Pestana, attorney for Petitioner herein, do hereby verify that this Petition for Rehearing is presented in Good Faith and not for purposes of delay.

I further verify that this Petition is restricted to the grounds specified in Rule 58 (2) of this Court, in that (1) this cause is controlled by the intervening case of *Kastigar & Steward v. United States*, ... U.S. .... (decided May 22, 1972, No. 70-117 [O.T. 1971]), Petition for Rehearing filed June 16, 1972, which Petitioner respectfully submits was wrongly decided; and further that (2) the intervening trial and conviction of Dr. Bernard Bender, the subject of the Grand Jury investigation which led to the contempt citation against Petitioner herein was a further intervening circumstance of substantial effect.

Dated June 22, 1972.

FRANK S. PESTANA